UNITED NATIONS **E**

Economic and Social Council

Distr.
GENERAL

E/CN.4/Sub.2/2002/35
17 July 2002

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion
and Protection of Human Rights
Fifty-fourth session
Item 6 of the provisional agenda

OTHER HUMAN RIGHTS ISSUES

Terrorism and human rights

Second progress report prepared by Ms. Kalliopi K. Koufa, Special Rapporteur*

* The report was submitted after the date set by the General Assembly to allow the Special Rapporteur to collect information on the most recent developments and to have them reflected in the report.

GE.02-14282 (E) 240702

CONTENTS

	Paragraphs	Page
Preface		3
Introduction	1 - 204	
I. A REVIEW OF RECENT INTERNATIONAL ANTI-TERRORIST ACTIVITY RELEVANT TO THE STUDY	21 - 50	8
A. Update on the main activities and initiatives undertaken at the global level	21 - 34	8
B. Update on the main activities and initiatives undertaken by regional and other intergovernmental organizations	35 - 50	12
1. European Union	35 - 37	12
2. Council of Europe	38 - 41	13
3. Organization for Security and Cooperation in Europe	42 - 43	15
4. Organization of American States	44 - 47	15
5. Other organizations	48 - 50	16
II. A REVIEW OF RELEVANT COMMENTS, OBSERVATIONS, AND DECISIONS ADOPTED BY INTERNATIONAL HUMAN RIGHTS BODIES AND MECHANISMS	51 - 58	17
III. CONCLUDING OBSERVATIONS	59 - 68	19

Preface

Since the Sub-Commission discussed the first progress report (E/CN.4/Sub.2/2001/31) appalling events, such as the disastrous 11 September 2001 terrorist attacks in the United States of America, stunned and shocked the world. While, intellectually, one might foresee catastrophic events of this magnitude, no one was, in fact, able to predict the enormous emotional, psychological and other effects they would have, and still continue to have, on the global community and on international law.

Terrorism has always been a fact of life and yet, admittedly, the unconscionable suicide attacks of 11 September 2001, which are unprecedented in the annals of terrorism, have crossed a threshold and triggered changes that are already shaping the early twenty-first century. While the Special Rapporteur, in a rather prescient way, had cautioned in her first progress report about the direct and indirect impact that acts of terrorism - whether committed by States or non-State actors - have on human rights, she also was unprepared for the impact that the tragic events of 11 September 2001, as well as their sequel, would have on all areas of terrorism and human rights under consideration in her study. Indeed, she believes that there is no aspect of her work untouched by the initial tragedy and then the year's progression of horrific events in so many parts of the world.

This progress report is submitted to the Sub-Commission at a time when there is everywhere a heated debate and a feeling of increasing urgency with regard to most of the issues concerning terrorism and human rights. Various efforts are under way at the United Nations and in other intergovernmental organizations, as well as among non-governmental organizations, to find the adequate or appropriate responses to terrorism and evaluate the conformity of anti-terrorism legislation or acts at the national, regional or international levels with international human rights and humanitarian law norms. The effort undertaken by the Sub-Commission in this area is only one of them.

In the opinion of the Special Rapporteur, the recognition and realization of what was really new not only on 11 September, but also in the immediate aftermath of the attacks, should become an integral component of every endeavour which seeks to serve the cause of justice and the rule of law. Without this recognition and realization, it will not be possible to contribute usefully to the ongoing debate and concerns over the much-sought-after balance between the often conflicting imperatives of securing and defending democratic society, and of safeguarding civil liberties and human rights.

In this regard, it may be meaningful and illustrative to review the wide range of activities and initiatives undertaken within the framework of the United Nations, some regional intergovernmental organizations, international treaty bodies and other human rights bodies and mechanisms. An exhaustive account of all the relevant activities and initiatives at the global, regional and national levels is, of course, neither possible nor necessarily desirable. A host of turning-point initiatives or far-reaching undertakings, such as the building of an international coalition against terror and waging a war against terror or terrorism, have received extensive coverage elsewhere, and this has generally been in fields other than human rights. Therefore, a selective human rights specific approach will be applied in this review of activities and initiatives, with a view also to facilitating the Sub-Commission's deliberation and comments on them.

Introduction

1. In its resolution 1996/20 of 29 August 1996, adopted without a vote, the Sub-Commission on Prevention of Discrimination and Protection of Minorities decided to entrust Ms. Kalliopi K. Koufa with the task of preparing, without financial implications, a working paper on the question of terrorism and human rights, to be considered at its forty-ninth session.

2. In its resolution 1997/42 of 11 April 1997, entitled "Human rights and terrorism", the Commission on Human Rights, noting the decision of the Sub-Commission to have a working paper prepared on the question of human rights and terrorism, reiterated its unequivocal condemnation of all acts, methods and practices of terrorism, regardless of their motivation, in all its forms and manifestations, wherever and by whomever committed, as acts of aggression aimed at the destruction of human rights, fundamental freedoms and democracy, threatening the territorial integrity and security of States, destabilizing legitimately constituted Governments, undermining pluralistic civil society and having adverse consequences for the economic and social development of States, and decided to continue consideration of the question at its fifty-fourth session as a matter of priority.

3. A working paper on the question of terrorism and human rights was submitted by Ms. Koufa to the Sub-Commission at its forty-ninth session (E/CN.4/Sub.2/1997/28). In that working paper, she identified the many diverse, complex and contentious issues involved in any discussion of the problem of terrorism and human rights, and set out a number of proposals for a study on this topic. After examining the working paper and endorsing in general the basic approach contained in it, the Sub-Commission, in its resolution 1997/39 of 28 August 1997, expressed its deep appreciation to Ms. Koufa for her analytical, very comprehensive and well-documented working paper, and recommended that the Commission on Human Rights approve her appointment as Special Rapporteur to conduct a comprehensive study on terrorism and human rights on the basis of her working paper.

4. The Commission on Human Rights, in its decision 1998/107 of 17 April 1998, approved the appointment of Ms. Koufa as Special Rapporteur and requested the Secretary-General to provide the Special Rapporteur with all the assistance necessary to enable her to carry out her study. The Economic and Social Council, in its decision 1998/278 of 30 July, endorsed decision 1998/107 of the Commission on Human Rights.

5. There was insufficient time between the approval of her appointment by the Commission and the deadline for submitting documents to the Sub-Commission for the Special Rapporteur to complete a preliminary report for the fiftieth session of the Sub-Commission. Even so, in an oral presentation to the Sub-Commission, the Special Rapporteur highlighted the essential elements of her study, including a comprehensive discussion of the purpose, scope, sources and structure of a preliminary report. The Sub-Commission, in its resolution 1998/29 of 26 August 1998, noting both her working paper and the oral presentation concerning the basis and the orientation of her study, requested the Special Rapporteur to submit her preliminary report to it at its fifty-first session.

6. The Special Rapporteur submitted the preliminary report (E/CN.4/Sub.2/1999/27) to the Sub-Commission at its fifty-first session. In that preliminary report she presented an historical overview of the development of the question of terrorism within the United Nations system and analysed the major areas in which terrorism affects, directly or indirectly, the full enjoyment of human rights. The Special Rapporteur also identified and further discussed other basic priority areas and questions most deserving of examination in the next phases of her study, such as the question of defining terrorism, the interrelated questions of the scope of application of international human rights law and of the accountability of the non-State actor, as well as some recent trends in contemporary international terrorism.

7. In its resolution 1999/26 of 26 August 1999, the Sub-Commission expressed its deep appreciation and thanks to the Special Rapporteur for her excellent and comprehensive preliminary report and requested the Secretary-General to transmit it to Governments, specialized agencies and concerned intergovernmental and non-governmental organizations with the request that they submit to the Special Rapporteur comments, information and other data relating to the study. The Sub-Commission also requested the Secretary-General to give the Special Rapporteur all the assistance necessary for the preparation of her progress report, in particular by providing for visits of the Special Rapporteur to Geneva, New York and the United Nations Centre for International Crime Prevention of the United Nations Office for Drug Control and Crime Prevention in Vienna, in order to hold consultations with the competent services and bodies of the United Nations, to complement her essential research and collect all the needed and up-to-date information and material. The Sub-Commission recommended that the Commission on Human Rights approve that request to the Secretary-General.

8. At its fifty-fourth session, the Commission on Human Rights, in its resolution 2000/30 of 20 April 2000, taking note of Sub-Commission resolution 1999/26, requested the Secretary-General to continue to collect information, including a compilation of studies and publications, on the implications of terrorism, as well as the effects of the fight against terrorism, on the full enjoyment of human rights and to make it available to all concerned special rapporteurs, including this Special Rapporteur. The Commission also endorsed the Sub-Commission's request to the Secretary-General to give the Special Rapporteur all the assistance necessary, in order to hold consultations with the competent services and bodies of the United Nations system to complement her essential research and to collect all the needed and up-to-date information and material for the preparation of her progress report. The Economic and Social Council, in its decision 2000/260 of 28 July 2000, approved that request to the Secretary-General.

9. In a note to the Sub-Commission at its fifty-second session (E/CN.4/Sub.2/2000/31), the Secretary-General set out the technical reasons that had made it impossible for the Special Rapporteur to finalize her progress report within the time available for the preparation of documents for that session. In her oral statement to the Sub-Commission, the Special Rapporteur spelled out the substantive and procedural difficulties and delays that had resulted in the inability to finalize the progress report, and requested that she should be allowed to submit it

to the Sub-Commission at its fifty-third session. In its decision 2000/115 of 18 August 2000, the Sub-Commission requested the Special Rapporteur to submit her progress report at its fifty-third session.

10. The Special Rapporteur submitted her progress report (E/CN.4/Sub.2/2001/31) to the Sub-Commission at its fifty-third session. In that progress report, she provided updated additional information on the development of recent international anti-terrorist action and addressed as many issues as possible, within the constraints for reports imposed on special rapporteurs. In particular, she addressed the definitional issue and the concept of terrorism by reference to the potential actors involved in it, and proceeded by examining the basic distinction that is generally made between State and sub-State (or individual and non-State) terrorism. With a view to lessening the definitional controversy and removing some of the current armed conflicts from the terrorism debate, the Special Rapporteur also explored the need to separate war from terrorism, attention being given to the issue of self-determination and terrorism in armed conflict.

11. Moreover, the requests of the Commission to the Special Rapporteur to address as well, among other issues, the issue of new forms of terrorism and of the potential use of weapons of mass destruction by terrorist groups, were also given due attention in that progress report. On her visits to New York and Vienna in order to hold consultations with the competent United Nations organs and bodies and complement her essential research, the Special Rapporteur was, for all practical purposes, inundated with materials relevant to her study, but from widely divergent perspectives - such as human rights, humanitarian and criminal law, political science, sociology, anthropology and related fields. In addition, recognition by the Special Rapporteur of the importance of the ongoing debate among academics and policy makers over the possible exploitation of new technologies by terrorist groups also led her to give much attention during her research to scientific material which is outside her usual field of academic attention and regarding which there is much controversy, if not intransigent disagreement.

12. As a consequence, in that progress report, the Special Rapporteur did not shy away from the discussion of contemporary forms of terrorism, to which she devoted a whole chapter. In that chapter, she examined the plausibility of the threat of terrorist use of weapons of mass destruction and considered the potentially grave implications that both the terrorist use of weapons of mass destruction (i.e., chemical, biological and nuclear weapons) or of some forms of new information technologies (i.e., "cyber-terrorism"), as well as States' counter-terrorism policies, hold for the enjoyment of human rights. She then argued that a lot of what was being described as terrorism could in fact also be categorized as non-terrorist criminal activity, and warned against the danger of falling prey to those alarmist analyses of contemporary terrorism which are complacent towards a counter-terrorist machinery easily associated with potential infringement upon civil liberties and human rights.

13. Other questions raised by the Commission on Human Rights, in its resolutions 1999/27, 2000/30 and 2001/37, for the attention of the Special Rapporteur were also considered in the report, in an extensive chapter dealing with the impact of terrorism on human rights. Finally, given the scale, scope and complexity of the topic, the Special Rapporteur included among her concluding observations a recommendation to the effect that she be allowed to prepare a second progress report.

14. Having examined this analytical progress report, the Sub-Commission, by its resolution 2001/18 adopted unanimously on 16 August 2001, expressed its deep appreciation and thanks to the Special Rapporteur for her excellent progress report and requested her to continue her direct contacts with the competent services and bodies of the United Nations, in particular those in New York and Vienna, in order to expand her research, update information for the study and expedite her work. In the same resolution, the Sub-Commission requested the Secretary-General to transmit the progress report of the Special Rapporteur to Governments, specialized agencies and concerned intergovernmental and non-governmental organizations with the request that they submit to the Special Rapporteur, as soon as possible, comments and information relating to the study. Finally, the Sub-Commission requested the Special Rapporteur to prepare a second progress report.

15. At its fifty-eighth session, the Commission on Human Rights, in its resolution 2002/35 of 22 April 2002, endorsed the decision of the Sub-Commission requesting the Secretary-General to give the Special Rapporteur all the necessary assistance in order to hold consultations with the competent services and bodies of the United Nations system to complement her essential research and to collect all needed and up-to-date information and data for the preparation of her second progress report. It also requested the Special Rapporteur to give attention in her next report to the questions raised in that resolution.

16. The events of 11 September 2001, shortly after the submission by the Special Rapporteur of her first progress report (E/CN.4/Sub.2/2001/31) to the Sub-Commission at its fifty-third session, were a terrible shock to people around the world and, like the rest of the world, the Special Rapporteur was completely shaken by the catastrophe. While convinced that the phenomenon of terrorism is (and will continue to be) a part of life, the dramatic and devastating terror acts of 11 September 2001, and their enormous consequences, have caused the Special Rapporteur to rethink and re-evaluate the future course of her work on the topic of terrorism and human rights. She considers, in particular, that it would be detrimental to the study to continue working on it as if 11 September has not happened. In this context, the Special Rapporteur thinks that it is crucial for the purposes of the study to draw attention at this stage to the following new trends and developments.

17. (a) Since 11 September 2001 the fight against terrorism has become one of the priorities for all intergovernmental systems, both at the international and regional levels, as well as for a number of countries. In fact, the fight against terrorism has turned into a major subject of debate - if not the most prominent one - in the various intergovernmental forums. Moreover, in the aftermath of 11 September 2001, this fight against terrorism has experienced a staggering acceleration. Significant legislative and other measures and decisions have been taken at the international and national levels. A great many other like initiatives are also under way, at both the intergovernmental and the national levels, in particular with regard to the definition of the crime of terrorism, legal cooperation and extradition, restrictions on the right to seek asylum, and so on.

18. (b) A number of these initiatives and measures have already been the subject of concern for universal and regional human rights bodies and mechanisms.[1] It is in this context that the United Nations High Commissioner for Human Rights, in her report entitled "Human rights: a

uniting framework", submitted to the Commission on Human Rights at its fifty-eighth session, reminded the members of the Commission that: "An effective international strategy to counter terrorism should use human rights as its unifying framework. The suggestion that human rights violations are permissible in certain circumstances is wrong. The essence of human rights is that human life and dignity must not be compromised and that certain acts, whether carried out by State or non-State actors, are never justified no matter what the ends. International human rights and humanitarian law define the boundaries of permissible political and military conduct. A reckless approach towards human life and liberty undermines counter-terrorism measures."[2]

19. Hence, in the aftermath of 11 September 2001, it is necessary to take into account these new developments. Additional measures and other action taken at the international level to fight terrorism should be examined, and additional national measures and anti-terrorism legislation need to be reviewed also for their conformity to international law, particularly, international human rights law, international humanitarian law and international refugee law. An ongoing Sub-Commission study on terrorism and human rights cannot be indifferent to these current trends and developments.

20. In view of the above, it will be valuable at this time to seize the opportunity given to the Special Rapporteur for the submission of a second progress report, to present in this report a review of not only the main international anti-terrorist activities and initiatives undertaken since 11 September 2001 which are relevant to this study, but also the relevant reactions by various international human rights bodies and mechanisms. Accordingly, the present progress report comprises the following five sections: a preface, containing some of the ideas that are guiding the Special Rapporteur in her work; an introduction, concerning her mandate and her approach; chapter one, pertaining to the development of international anti-terrorist activity in the framework of the United Nations system and other intergovernmental organizations after the terrorist attacks in the United States of America; chapter two, containing a review of relevant comments, observations and decisions of human rights bodies and mechanisms, both at the universal and at the regional levels; and, finally, chapter three, consisting of concluding observations.

I. A REVIEW OF RECENT INTERNATIONAL ANTI-TERRORIST ACTIVITY RELEVANT TO THE STUDY

A. Update on the main activities and initiatives undertaken at the global level

21. In the wake of the emotional and political fallout of the 11 September 2001 attacks, significant anti-terrorist action has been taken within the United Nations. The General Assembly addressed the issue of the tragic events the day after the onslaught and adopted unanimously a resolution in which it urgently called for international cooperation to prevent and eradicate acts of terrorism and to bring to justice the perpetrators, organizers and sponsors of the outrages.[3] The very same day, the Security Council, in its unanimous resolution 1368 (2001), unequivocally condemned in the strongest terms the horrifying terrorist attacks and regarded such acts, like any act of international terrorism, as a threat to international peace and security,

and called on the international community to redouble its efforts to prevent and suppress terrorist acts, including by increased cooperation and full implementation of the relevant international anti-terrorist conventions and Security Council resolutions, in particular its resolution 1269 (1999).[4]

22. Further, the reactivation of the work of the Ad Hoc Committee established pursuant to General Assembly resolution 51/210 of 17 December 1996 to elaborate inter alia a comprehensive convention on international terrorism and, especially, the adoption by the Security Council of its resolution 1373 (2001) on 28 September 2001, constitute the major developments within the United Nations system. In particular, Security Council resolution 1373 (2001) marks a milestone on the road to combating international terrorism and will surely leave its imprint on the years to come. It poses challenges, and will probably have a significant effect with respect to human rights, for in the words of the United Nations High Commissioner for Human Rights "serious human rights concerns ... could arise from the misapplication of resolution 1373 (2001)".[5]

23. More specifically, at its fifty-fifth session, the General Assembly, in resolution 55/158 of 17 December 2000, decided that the work on drafting a comprehensive convention on international terrorism by the Ad Hoc Committee established by its resolution 51/210 of 17 December 1996, should continue during the fifty-sixth session of the General Assembly within the framework of a working group of the Sixth Committee.[6] The Sixth Committee working group met from 15 to 26 October 2001. Although it came close to reaching agreement on the draft comprehensive convention, it could not finalize the few remaining articles involving politically sensitive matters. As a consequence, the Ad Hoc Committee established by General Assembly resolution 51/210 continued work on the drafting of the comprehensive convention from 28 January to 1 February 2002 but, despite some signs of further progress, the outstanding divergent views of delegations could not be finally reconciled. Both the report of the Sixth Committee working group,[7] and the report of the Ad Hoc Committee[8] evidence once again how difficult it is, politically, ideologically and legally, to define the crime of international terrorism and approach the issue of how to address the armed conflict governed by humanitarian law (articles 2 and 18 of the draft).

24. In this context, the Special Rapporteur notes that human rights analysis has been largely absent from the discussions on the controversial articles. In her view, including the human rights dimension more in the discussion could assist in resolving some of the differences. In any case, the Convention ultimately must conform to human rights and humanitarian law standards, which should be mentioned in the preambular paragraphs in addition to being included rather obliquely, in the Special Rapporteur's view, in various proposals for article 18 of the draft. As a matter of fact, the draft comprehensive convention on international terrorism, at the current state of deliberations, is a source of concern from several points of view, notably, the definition of the crime of international terrorism, the scope of application of the convention and international humanitarian law, the principle of non refoulement and the safeguards against impunity. Amnesty International,[9] Human Rights Watch,[10] and the International Commission of Jurists[11] are among the non-governmental organizations that have already raised questions on these issues.

25. On 28 September 2001, the Security Council, acting under Chapter VII of the Charter of the United Nations, adopted resolution 1373 (2001). In this resolution, which is binding on all Member States, the Security Council, reaffirming that any act of international terrorism constitutes a threat to international peace and security, reaffirming also the need to combat by all means, in accordance with the Charter of the United Nations, threats to international peace and security caused by terrorist acts and reaffirming, further, the inherent right of individual or collective self-defence as recognized by the Charter of the United Nations, as well as the principle that every State has the duty to refrain from organizing, instigating, assisting or participating in terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, and calling on States to improve international cooperation to prevent and suppress the financing and preparation of any acts of terrorism, decided that all States should: prevent and suppress the financing of terrorist acts; criminalize the wilful provision or collection of funds for such acts; freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts, and of persons and entities acting on behalf of terrorists; and prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit, attempt to commit, facilitate or participate in the commission of terrorist acts.

26. Furthermore, in the same resolution the Security Council, decided that all States should refrain from providing any form of support to entities or persons involved in terrorist acts; take the necessary steps to prevent the commission of terrorist acts; deny safe haven to those who finance, plan, support or commit terrorist acts, or provide safe havens, and prevent them from using their respective territories for those purposes against other States or their citizens; ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such acts; afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings; and prevent the movement of terrorists or terrorist groups by effective border and other controls.

27. The Security Council also called upon all States: to find ways of intensifying and accelerating the exchange of operational information regarding terrorist actions or movements of terrorist persons or networks, forged or falsified travel documents, traffic in arms, explosives or sensitive materials, use of communications technologies by terrorist groups and the threat posed by the possession of weapons of mass destruction by terrorist groups; to exchange information and cooperate to prevent the commission of terrorist acts; to become parties as soon as possible to the relevant international conventions and protocols relating to terrorism. It also called upon States to take appropriate measures in conformity with national and international law, including international human rights standards, before granting refugee status, for the purpose of ensuring that the asylum-seeker had not planned, facilitated or participated in the commission of terrorist acts; and to ensure that refugee status was not abused by the perpetrators, organizers or facilitators of terrorist acts and that claims of political motivation were not recognized as grounds for refusing requests for extradition of alleged terrorists.

28. Last but not least, the Security Council decided to establish a Committee of the Security Council, consisting of all its members, to monitor implementation of resolution 1373 (2001), with the assistance of appropriate expertise, and called upon all States to report to the Committee, within 90 days, on the steps they had taken to implement that resolution.

29. The Counter-Terrorism Committee of the Security Council was established in October 2001. In that same month, it produced its work programme, as well as guidance for the submission of reports pursuant to paragraph 6 of Security Council resolution 1373 (2001).[12] By the end of May 2002, 160 States had submitted their reports to the Counter-Terrorism Committee,[13] including the European Union.[14] Within the framework of Security Council resolution 1373 (2001), a number of States have adopted new criminal legislation to fight terrorism. Other States have presented draft legislation in the same regard.

30. On 12 November 2001, at the end of a ministerial-level meeting to discuss threats to international peace and security caused by international terrorism, the Security Council, in its resolution 1377 (2001), adopted unanimously the Declaration on the Global Effort to Combat Terrorism annexed to that resolution. The Declaration calls on States to take urgent steps to implement fully Security Council resolution 1373 (2001) and invites the Counter-Terrorism Committee to explore ways in which States can be assisted in doing so. The Declaration also singles out attention to the issues of terrorist financing and provision of a safe haven to terrorist groups, from the other steps that States must undertake to implement fully resolution 1373 (2001).

31. For the rest, the General Assembly addressed, as usual, the item entitled "Measures to eliminate international terrorism". Because of the tragic events of 11 September 2001, it proceeded with the initial debate on the item in the plenary, on the understanding that the consideration of the technical aspects of the item would take place as usual in the Sixth Committee. General Assembly resolution 56/88 on measures to eliminate international terrorism, adopted without a vote on 12 December 2001 and, therefore, considered a great achievement, differs little in essence from the previous year's resolution on the same item, apart from the necessary updates and reference to Security Council resolution 1373 (2001). In resolution 56/88, the General Assembly welcomed the important progress attained in the elaboration of the draft comprehensive convention on international terrorism and decided that the Ad Hoc Committee established by General Assembly resolution 210 of 17 December 1996 should continue to elaborate that draft convention as a matter of urgency, should continue its efforts to resolve the outstanding issues relating to the elaboration of a draft international convention for the suppression of acts of nuclear terrorism and should keep on its agenda the question of convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations.

32. On 19 December 2001, the General Assembly, in its resolution 56/160 entitled "Human rights and terrorism", adopted by a recorded vote, bearing in mind that terrorism creates an environment that destroys the right of people to live in freedom from fear, reiterated its unequivocal condemnation of the acts, methods and practices of terrorism in all its forms and

manifestations as activities aimed at the destruction of human rights, fundamental freedoms and democracy, threatening the territorial integrity and security of States, destabilizing legitimately constituted Governments, undermining pluralistic civil society and having adverse consequences for the economic and social development of States. The General Assembly also urged the international community to enhance cooperation at the regional and international levels in the fight against terrorism, in accordance with relevant international instruments, including those relating to human rights.

33. On 20 October 2001, the General Conference of UNESCO, convened in Paris for its thirty-first session, adopted a resolution in which it rejected the association of terrorism with any particular religion, religious belief or nationality and considered that the present challenges require a coherent and coordinated response by the organizations of the United Nations system as a whole. Moreover, noting that intolerance, discrimination, inequality, ignorance, poverty and exclusion, among others, provided fertile ground for terrorism, the General Conference affirmed that while acts of terrorism could never be justified whatever the motives, the world community required a global and inclusive vision of development based on the observance of human rights to meet the needs of the most vulnerable populations and segments of society. Finally, it expressed its firm conviction that based upon its mandate and within its areas of competence - education, science, culture and communication - UNESCO had a duty to contribute to the eradication of terrorism, drawing on its character as an intellectual and ethical organization.[15]

34. On 23 May 2001, the International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly on 15 December 1997, entered into force. Already 63 States are parties to the Convention, while 58 have signed it. On 10 April 2002, the International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly on 9 December 1999, entered into force. Until now, 36 States have become parties to this Convention and 132 States have signed it.

B. Update on the main activities and initiatives undertaken by regional and other intergovernmental organizations

1. European Union

35. On 19 September 2001, the Commission of the European Communities adopted two proposals for framework decisions of the Council of the European Union: one on the approximation of member States' criminal laws with a view to establishing a common definition of a terrorist act and laying down common criminal sanctions, the other on the creation of a European arrest warrant. The document issued on the first proposal, under the title "Proposal for a Council framework decision on combating terrorism",[16] contains an explanatory memorandum as well as the text of the framework decision and seeks to address what are viewed by the Commission as legal loopholes in existing measures undertaken by the United Nations and the European Convention on the Suppression of Terrorism (1977) under the mandate of the Council of Europe by inter alia establishing "minimum rules relating to the constituent elements and penalties in the field of terrorism".[17] The other proposal, entitled "Proposal for a Council

framework decision on the European arrest warrant and the surrender procedures between the member States",[18] proceeds from the Tampere European Council meeting (1999), which set the objective of replacing extradition with a procedure for handing over perpetrators of terrorist attacks on the basis of a European arrest warrant.

36. On 6 December 2001, the Council of the European Union reached provisional agreement on the proposal for a Council framework decision on combating terrorism, and on 6/7 December 2001, 14 of the European Union members agreed on the draft framework decision on the European arrest warrant. On 8 January 2002, the European Parliament, on reconsultation by the Council, approved by legislative resolutions both draft framework decisions.[19] On 27 December 2001, the Council of the European Union adopted four important Acts: two Common Positions, one on combating terrorism, based largely on United Nations Security Council resolution 1373 (2001), the other on the application of specific measures to combat terrorism, based largely on the proposed European Union Council framework decision on combating terrorism; a Regulation on specific restrictive measures against certain persons and entities, which set out the details of the freezing of funds and the ban on the issue of resources to terrorist persons, groups or entities; and an implementing Decision establishing the list of persons, groups or entities covered by the freezing of funds and the ban on the supply of resources.[20]

37. On 6 February 2002, the European Parliament voted by an overwhelming majority to support the two proposed framework decisions on combating terrorism and on creating a European arrest warrant which, in the meantime, had been substantially amended by the Council of the European Union and, therefore, re-submitted to the European Parliament. These two proposed framework decisions constitute the legislative basis of the European Union's response to terrorism and a step towards the creation of a European judicial space. The proposed framework decision on combating terrorism, which contains a common definition of various types of terrorist offences and severe criminal sanctions, is due to come into effect in January 2003, whereas the European arrest warrant is expected to attain legal force in January 2004.[21]

2. Council of Europe

38. Immediately after the terrorist attacks of 11 September 2001 in the United States of America, the Council of Europe started a process of review of existing legal instruments regarding the fight against terrorism. Thus, on 12 September 2001, the Committee of Ministers of the Council of Europe, at the 763rd meeting of the Ministers' Deputies, adopted the "Declaration on the fight against international terrorism" and decided to hold a special meeting in order to examine, among other things, the scope for updating the European Convention on the Suppression of Terrorism.[22] The Committee of Ministers, at its one hundred and ninth session, on 8 November 2001, agreed to take steps rapidly in order to give increased effectiveness to the existing international instruments of the Council of Europe on the fight against terrorism, by, among other things, setting up a Multidisciplinary Group on International Action against Terrorism. Accordingly, the Multidisciplinary Group on International Action against Terrorism was instructed to examine the existing international

instruments of the Council of Europe in the area of fighting terrorism, in particular the European Convention on the Suppression of Terrorism, and report to the Committee of Ministers of the Council of Europe on additional action which the Council of Europe could usefully carry out in the field of the fight against terrorism.

39. The Council of Europe adopted the European Convention on Cyber-Crime in November 2001. This Convention is the result of four years of work by experts from not only the member States of the Council of Europe but also the United States, Canada, Japan and other States that are not members of the Council of Europe. The Convention on Cyber-Crime was signed by 30 States at the opening ceremony of the International Conference on Cyber-Crime in Budapest, on 23 November 2001. The Convention is the first ever international treaty on criminal offences committed via the Internet and other computer networks, and deals in particular with infringements of copyright, computer-related fraud, child pornography and violations of network security. It also contains a series of powers and procedures, such as the search of computer networks and interception. Its main objective, set out in the preamble, is to pursue a common criminal policy aimed at the protection of society against cyber-crime, especially by adopting appropriate legislation and fostering international cooperation.

40. The Parliamentary Assembly of the Council of Europe adopted two important texts on terrorism in September 2001. In its resolution 1258 (2001), the Parliamentary Assembly called on the Council of Europe member States to review the scope of the existing national legal provisions on the prevention and suppression of terrorism, and to give urgent consideration to the possibility of amending and widening the Rome Statute to allow the remit of the International Criminal Court to include acts relating to international terrorism. In its Recommendation 1534 (2001), the Parliamentary Assembly urged the Committee of Ministers, with regard to the European Convention on the Suppression of Terrorism, to remove as a matter of urgency article 13, which grants contracting States the right to make reservations that can defeat the purpose of the convention by enabling the States to refuse extradition for offences otherwise extraditable. The Parliamentary Assembly also recommended that the Committee of Ministers examine, in cooperation with the European Union bodies, the modalities for extending the European Union arrest warrant to all Council of Europe member States, in the field of the fight against terrorism.

41. The above-mentioned "Declaration on the fight against international terrorism", adopted by the Committee of Ministers of the Council of Europe, provided, among other things, for the instruction of the Steering Committee for Human Rights of the Council of Europe to draw up guidelines, based on democratic principles, for dealing with movements threatening the fundamental values and principles of the Council of Europe.[23] To this end, the Steering Committee for Human Rights set up a Group of Specialists on Human Rights and the Fight against Terrorism, with the mandate to elaborate, by 30 June 2002, guidelines for the member States, which would evince the principles based on the safeguarding of human rights that should guide their actions in fighting terrorism, in a manner which respects democracy and the rule of law. Accordingly, in February 2002, this group of specialists submitted provisional draft guidelines[24] relating to: the obligation of States to protect all persons from terrorism; the prohibition of arbitrary measures in the fight against terrorism and the legality of counter-terrorist measures; the absolute prohibition of torture; measures of preventive coercion;

arrest and surveillance; detention and the regular supervision of preventive detention; judicial procedures; the punishment for terrorist activities; the right to seek asylum; extradition, expulsion and refoulement; and the freedoms of thought, expression, assembly and association.

3. Organization for Security and Co-operation in Europe

42. In the aftermath of the terrorist attacks of 11 September 2001, significant initiatives have also been taken in the framework of the Organization for Security and Co-operation in Europe (OSCE). Thus, the Ministerial Council of the OSCE, at its ninth meeting, in Bucharest, on 3 and 4 December 2001, adopted "The Bucharest Plan of Action for Combating Terrorism".[25] In this Action Plan, the Ministerial Council, underlining that terrorism is a threat to international peace and security, in the OSCE area as elsewhere, affirmed that the aim of the Action Plan was to establish a framework for comprehensive OSCE action to be taken by participating States and the Organization as a whole to combat terrorism, fully respecting international law, including international human rights law. The Bucharest Plan of Action is aimed at increasing interaction between States, especially through the ratification of the United Nations conventions and protocols relating to terrorism, and the strengthening of national anti-terrorist legislation. In March 2002, the Forum for Security Co-operation (FSC) of the OSCE adopted a "Road Map of the FSC for the Implementation of the Bucharest Plan of Action for Combating Terrorism".[26] The Portuguese Presidency of the OSCE appointed, on 29 January 2002, the former Minister of Defence of Denmark, Jan Troejborg, as the Personal Representative of the OSCE Chairman-in-Office to coordinate the organization's counter-terrorism initiatives.

43. From 13 to 14 December 2001, at the invitation of Kyrgyzstan, the OSCE and the United Nations Office for Drug Control and Crime Prevention organized the Bishkek International Conference on Enhancing Security and Stability in Central Asia: Strengthening Comprehensive Efforts to Counter Terrorism. The Conference adopted a Declaration and a Programme of Action. On 21 December 2001, the OSCE submitted a report to the Counter-Terrorism Committee of the United Nations Security Council, setting out the Action Plans and Declarations adopted by the above-mentioned meetings, as well as other information required under Security Council resolution 1373 (2001).[27]

4. Organization of American States

44. The events of 11 September 2001 brought about a renewal of interest in Inter-American efforts to confront terrorism. Thus, on 21 September 2001, during the twenty-third Meeting of Consultation of Ministers of Foreign Affairs of the Organization of American States (OAS), the Ministers of Foreign Affairs, by their resolution entitled "Strengthening hemispheric cooperation to prevent, combat, and eliminate terrorism", entrusted the Permanent Council with preparing a draft Inter-American Convention Against Terrorism, and urged the States to study the international legal repercussions of the conduct of government authorities who provide financial support to, protect, or harbour terrorist individuals or groups.[28]

45. In the light of this and subsequent resolutions of the organs of the Inter-American system, the Inter-American Committee Against Terrorism (CICTE), held two special sessions, on 15 October and 29 November 2001. Between these sessions, various subcommittees and other bodies worked diligently to identify counter-terrorism actions for OAS member States to

implement at the multilateral, regional, subregional and national levels, and to draft an ambitious concrete agenda for CICTE to pursue in 2002-2003. At the second regular session of CICTE, held from 28 to 29 January 2001 in Washington, D.C., the various OAS delegations reported on the action taken by their respective States to implement the resolution of the OAS Ministers of Foreign Affairs of 21 September 2001 on strengthening hemispheric cooperation to prevent, combat and eliminate terrorism.

46. As already mentioned, under the terms of this resolution, the Permanent Council was entrusted with preparing a draft Inter-American convention against terrorism. As a consequence, the Committee on Juridical and Political Affairs was tasked by the Permanent Council with elaborating the draft and a working group was set up for that purpose. Previously, in 1995, a draft Inter-American convention for the prevention and elimination of terrorism had been drawn up by the Inter-American Juridical Committee.[29] The working group charged with preparing a draft Inter-American convention against terrorism by the Committee on Juridical and Political Affairs, took up again the work relating to the draft Inter-American convention for the prevention and elimination of terrorism of 1995.[30] However, the draft convention drawn up by the working group and adopted by the Committee on Juridical and Political Affairs was different in many respects from the draft of 1995, particularly, with regard to the technique of incrimination.[31] On 3 June 2002, the General Assembly of the OAS adopted the Inter-American Convention Against Terrorism.[32]

47. The Inter-American Convention Against Terrorism does not create a new definition of the crime of terrorism and uses the technique of incrimination by referral to other international instruments. Thus, with regard to the definition of the crime of terrorism, the Inter-American Convention refers to offences established in various relevant international conventions.[33]

5. Other organizations

48. On 11 September 2001, the League of Arab States issued the Cairo Communiqué regarding the tragic terrorist attacks.

49. On 11 November 2001, on the margins of the fifty-sixth session of the United Nations General Assembly, the Central Organ of the Organization of African Unity (OAU) Mechanism for Conflict Prevention, Management and Resolution, held its 5th Extraordinary Session at Ministerial Level, in New York. The session was convened at the request of the Republic of Sudan, to deliberate on the problem of terrorism and consider ways through which Africa could further contribute to the efforts of the international community to combat terrorism after the 11 September 2001 events. At the end of the deliberations, the Central Organ decided, inter alia, to urge member States to sign and ratify the existing international conventions and protocols relating to terrorism, and to request member States to ensure their effective follow-up and implementation of United Nations Security Council resolution 1373 (2001). It also stressed the relevance of the OAU Convention on the Prevention and Combating of Terrorism, as part of the efforts of the international community against terrorism. In addition, it welcomed the Declaration Against Terrorism, adopted by the African Summit held in Dakar on 17 October 2001, including the proposal concerning the drafting of an additional protocol to the OAU Convention on terrorism.[34]

50. From 1 to 3 April 2002 the Organization of the Islamic Conference (OIC) held an extraordinary session of the Islamic Conference of Foreign Ministers in Kuala Lumpur, which resulted in the Kuala Lumpur Declaration on International Terrorism and Plan of Action.[35] Under the Plan of Action, the OIC established a 13-member open-ended Ministerial-level OIC Committee on International Terrorism, with a mandate to formulate recommendations on, inter alia, ways of expediting the implementation of the OIC Code of Conduct and the Convention on Combating International Terrorism.

II. A REVIEW OF RELEVANT COMMENTS, OBSERVATIONS AND DECISIONS ADOPTED BY INTERNATIONAL HUMAN RIGHTS BODIES AND MECHANISMS

51. It is most relevant to start this review by referring to the new general comment on states of emergency (article 4 of the International Covenant on Civil and Political Rights), adopted by the Human Rights Committee just a little time before the terrorist attacks of 11 September 2001.[36] This general comment of the Human Rights Committee is of great significance with regard to the limits imposed by international human rights law on States in their fight against criminality and especially in the matter of counter-terrorism.

52. Thus, in the opinion of the Human Rights Committee, States parties to the Covenant may in no circumstances invoke article 4 of the Covenant as justification for acting in violation of humanitarian law or peremptory norms of international law, for instance by taking hostages, by imposing collective punishments, through arbitrary deprivations of liberty or by deviating from fundamental principles that guarantee a fair trial, including the presumption of innocence.[37] The Human Rights Committee has also pointed out that only the courts of law may judge and convict a person for a criminal offence.[38] In this context, the Human Rights Committee has also specified that safeguards related to derogation as provided for in article 4 of the Covenant are based on the principles of legality and the rule of law, which are inherent to the Covenant as a whole. Moreover, as certain elements of the right to a fair trial are explicitly guaranteed under international humanitarian law during armed conflict, the Committee finds no justification for derogation from these guarantees during other emergency situations. It also emphasized that the presumption of innocence must be respected. In order to protect non-derogable rights, the right to take proceedings before a court in order to enable the court to decide without delay on the lawfulness of detention must not be diminished by the decision of a State party to derogate from the Covenant.[39]

53. In the aftermath of 11 September 2001, the Human Rights Committee has already had the opportunity to examine certain measures taken by States within the framework of Security Council resolution 1373 (2001) and their compatibility with the International Covenant on Civil and Political Rights. Thus, for instance, in one case, the Human Rights Committee expressed concern that a State party to the Covenant, in seeking to give effect to its obligation to combat terrorist activities pursuant to Security Council resolution 1373 (2001), was considering inter alia the adoption of legislative measures which would have potentially far-reaching effects on rights guaranteed in the Covenant, and which in that State party's view might require

derogations from these human rights obligations. According to the Human Rights Committee, the State party should ensure that any measures undertaken in this regard are in full compliance with the provisions of the Covenant, including, when applicable, the provisions on derogation contained in article 4 of the Covenant.[40]

54. In another case, the Human Rights Committee has expressed its concern regarding the negative effects of measures taken after 11 September 2001, in particular in cases relating to asylum-seekers, and recommended that the authorities of the State party concerned should guarantee observance of the principle of non refoulement in the asylum and expulsion proceedings.[41]

55. In yet another case, regarding the practice of judging civilians in military courts, the Human Rights Committee expressed its concern that military tribunals have broad jurisdiction which is not confined to criminal cases involving members of the armed forces but covers also civil and criminal cases, when in the opinion of the executive the exceptional circumstances of a particular case do not allow the operation of the courts of general jurisdiction. The Human Rights Committee recommended in this case that the State party concerned should adopt legislative measures to limit the jurisdiction of the military tribunals to the trial of members of the military accused of military offences.[42]

56. The Committee on the Elimination of Racial Discrimination, on 8 March 2002, issued a statement on terrorism, in which it emphasized that measures to combat terrorism must be in accordance with the Charter of the United Nations and that they are to be considered legitimate if they respect the fundamental principles and the universally recognized standards of international law, in particular, international human rights law and international humanitarian law. In this statement, the Committee on the Elimination of Racial Discrimination also recalled that the prohibition of racial discrimination is a peremptory norm of international law of a non-derogable nature. It, further, insisted that the principle of non-discrimination must be observed in all areas, particularly in matters concerning liberty, security and dignity of the person, equality before tribunals and due process of law, as well as international cooperation in judicial and police matters in these fields, and expressed its intention to monitor, in accordance with the International Convention on the Elimination of All Forms of Racial Discrimination, the potentially discriminatory effects of legislation and practices adopted in the framework of the fight against terrorism.[43]

57. On 10 December 2001, on the occasion of United Nations Human Rights Day, 17 independent experts of the Commission on Human Rights issued a joint statement in which they reminded States of their obligations under international law to uphold human rights and fundamental freedoms in the context of the aftermath of the tragic events of 11 September 2001. In their joint statement, the independent experts expressed deep concern over the adoption or contemplation of anti-terrorist and national security legislation and other measures that might infringe upon the enjoyment by all of human rights and fundamental freedoms. They deplored human rights violations and measures that had particularly targeted groups, such as human rights defenders, migrants, asylum-seekers and refugees, religious and ethnic minorities, political activists and the media. They also reminded States that under international human rights law certain rights cannot be derogated from under any circumstances,

including in times of public emergency; and called upon them to take appropriate measures to uphold respect for such fundamental rights as the right to liberty and security of person, the right to be free from arbitrary arrest, the presumption of innocence, the right to a fair trial, the freedoms of opinion, expression and assembly, and the right to seek asylum. Last but not least, they called upon States to limit the measures taken to the extent strictly required by the exigencies of the situation, as public policies must strike a fair balance between, on the one hand, the enjoyment of human rights and freedoms by all and, on the other hand, legitimate concerns over national and international security, and emphasized that the fight against terrorism must not result in violations of human rights, as guaranteed under international law.[44]

58. Finally, special attention should be drawn to the thought-provoking report of the United Nations High Commissioner for Human Rights, submitted, pursuant to General Assembly resolution 48/141, to the Commission on Human Rights at its fifty-eighth session, under the title "Human rights: a uniting framework". In her report, the High Commissioner expresses her particular preoccupation with the human insecurity prevailing worldwide in the aftermath of the appalling terrorist acts of 11 September. She addresses the big issue of the balance between human rights and security from a human rights perspective that places the law and respect for human rights commitments at the centre of an overall effective strategy to counter terrorism, while recognizing at the same time the legitimate concerns for national and international security. Her characteristic human rights approach to terrorism and to the rising levels of global anxiety following the events of 11 September 2001 is appropriately reflected in the following passage from her final remarks: "Despite global uncertainty, it is essential for everybody to uphold the universal human rights standards that were created collectively. Acts, methods and practices of terrorism aim at the destruction of these standards. This is why it is essential that all States implement the operational measures sought by the Security Council in resolution 1373 (2001) in a manner consistent with human rights. At the same time, building a durable global human rights culture, by asserting the value and worth of every human being, is essential if terrorism is to be eliminated. In other words, the promotion and protection of human rights should be at the centre of the strategy to counter terrorism."[45]

III. CONCLUDING OBSERVATIONS

59. Since the beginning of her work, the Special Rapporteur has commented on the scale and scope of the mandate mostly in terms of legal issues and analysis and world events that have generated and continue to drive interest in this topic. The appalling events of 11 September 2001 have introduced new and unprecedented dimensions to the legal issues and analysis, also to world events that feed interest in the topic more than ever before. In the aftermath of the catastrophe, the scale and scope of the mandate have become almost unmanageable. In addition to the events of 11 September 2001, acts of terrorism throughout the world have escalated, especially related to a number of other crisis situations and "hot spots" throughout the world. Responses to terrorism have themselves been dramatic, sometimes undertaken with a sense of panic or emergency. In fact, there still exists a tone of "close-to-panic" reaction in much of the political and legal activity relating to terrorism and, of course equally importantly, on the part of many of the world's people. And "close-to-panic" reactions may have serious implications for international and human rights law, as well as humanitarian law.

60. There has been a plethora of proposals for national and international anti-terrorism legislation and measures, some of which have been adopted or are in the process of being adopted. It is far too premature to evaluate even those that have been adopted, as legal challenges are in the works and no one knows what parts, if any, will survive judicial review. There have been special procedures adopted in the United Nations, including but not limited to the Security Council Counter-Terrorism Committee, which has not yet undertaken to include the issue of human rights in its work in any major way. Regional intergovernmental organizations and many States have either new or proposed special anti-terrorism procedures. As already mentioned above, emergency sessions have been held in a number of areas, called by heads of State and other State authorities or by international and regional leaders. In addition, special sessions, conferences and colloquies have been convened at numerous universities around the world, and by non-governmental organizations and "think tanks" as well. There has been so much formal and informal material written that it is, for all practical purposes, impossible to cover all that is now considered most important, much less to read it all. Because so much is happening even as this is written, and with so many far-reaching implications, there has been too little time to reflect on it, much less to try to assess it properly. The very fact that international legal and political debate, on many issues under consideration by the Special Rapporteur, has deteriorated dramatically, supplanting meaningful and peaceful dialogue, has added difficulty to her already difficult task ahead.

61. The legal issues and analysis of this mandate cover the full array of human rights and humanitarian law in many areas, including the definition of terrorism itself, but also the responses to terrorism or its root causes. Some of the issues of human rights and humanitarian law related to the definition of terrorism had already been highly contentious for some time. Thus, in particular, the issue of armed conflict and the distinctions between, for example, civil wars and terrorism or between the use of force in defence of the right to self-determination and terrorism. On the other hand, a number of other issues, such as accountability for breaches of humanitarian law, including both national and international actions, which have usually been addressed in a more settled fashion, have now also become contentious. States and scholars, or commentators, often seem to have abandoned certain long-held views in favour of different ones. On some occasions, scholars who have taken one position appear to abandon it completely, and then recant or recast it. There are new and dramatic conflicts of views in some of the core areas of international law, difficult to sort out in the best of circumstances. What is clear though is that some scholars are now defending positions that would have been considered unreasonable, even by them, only a year ago - that is, positions strongly rejecting many of the basic principles of international law, human rights law and humanitarian law under consideration by the Special Rapporteur.

62. The issue of sub-State terrorism has also disintegrated into heated debate, now in relation also to the legal status of Al Qaeda members and its leadership. While they originally focused on the differences between transnational criminal organizations and terrorist groups, there now seems to be a growing apprehension among States Members of the United Nations concerning the links and symbiotic relationships between such organizations and groups. Increased access to technology, information and communication has benefited criminal enterprises and terrorist groups such as Al Qaeda, and globalization has allowed them to network, exploit and transfer

funds transnationally, to have access to weapons and military equipment and to maximize synergetic connections with organized crime. Some of the actions and operations of these terrorist organizations now raise novel questions and contention in international law.

63. Human rights and humanitarian law issues related to responses to terrorism were not significantly contentious in international law prior to 11 September 2001. According to common article 3 of the Geneva Conventions and Additional Protocol II thereto, a State can be at war with a revolutionary group or insurgents, regardless of the group's legitimacy. The novel question of whether a State can be at war with a terrorist group or a multinational criminal organization was never raised prior to 11 September 2001. In the post-11 September 2001 period, this novel question was raised, and is even contentious. Irrespective of the answer given, it remains clear that international humanitarian law refers to certain "protected targets", such as non-combatant civilians, prisoners of war, the sick, the wounded, and so on, which cannot be attacked under any circumstances. The only possible exonerating circumstance is a reasonable factual mistake. However, no rule of military necessity exonerates those who commit such violations with criminal responsibility. Prior to 11 September 2001, the need to respect fully all human rights norms in all responses to terrorism was also clear. In the post-11 September 2001 period, there appears to be a waiver of this view, not a few States and scholars suggesting that abrogation of human rights may be necessary to combat terrorism. In this context, many areas of responses have become exceptionally contentious, with the result that every issue of response generates heated debate.

64. Addressing the root causes of terrorism has now also become a rather highly contentious area, with a number of States and scholars insisting that, as there is no justification whatever for terrorism, there should be no effort made to try to understand its root causes. Instead, they argue there should be ever more militant action against terrorists and terrorist groups, with the goal of wiping them out. This position is met with dismay by the majority, who insist that it is foolhardy to ignore review of root causes, which are, in some situations, directly or indirectly related to the non-realization of human rights. The Special Rapporteur sides with those who support study of root causes in order to fashion more rationally means of eliminating terrorism. However, this topic alone is too vast.

65. Some of the actions undertaken in the cause of the global war against terrorism have been the cause of consternation also for the highest officials in the United Nations system. For instance, the United Nations Secretary-General has pleaded on a number of occasions for States to uphold all human rights, stressing that greater respect for human rights, not their curtailment, is the best means of preventing terrorism. Addressing recently the Commission on Human Rights he stated: "let us ensure that our security measures are firmly founded in law. In defending the rule of law, we must ourselves be bound by law".[46] He has also pointed out that the Council and the Counter-Terrorism Committee "must ... be sensitive to human rights as they pursue their work".[47] Attention has already been drawn to the concerns of the United Nations High Commissioner for Human Rights, also expressed in a number of statements and comments throughout the period. The United Nations High Commissioner for Refugees also has repeatedly voiced his own consternation about some measures which even though adopted in good faith have victimized people in need of international protection.[48]

66. All these developments occurred after the submission by the Special Rapporteur of her first progress report to the Sub-Commission at its fifty-third session. Nonetheless, the Special Rapporteur considers that the observations contained in her first progress report still continue to be pertinent. In a rather prescient way, she had cautioned in that report against, for example, an over-hasty definition of terrorism by the Sub-Commission. She had also cautioned against the curtailment of protected procedural rights to presumption of innocence, to counsel, to examine and re-examine the evidence, to know the charges and to prepare a defence. She also warned against use of incommunicado detention and other violations of criminal justice procedures. Many of the current acts of States and proposed legislation either violate or carry substantial risks of violating these rights. In a stunning irony, the new debate on human rights includes some States and some human rights scholars who now advocate curtailing the very human rights the risk of curtailment of which was one of their major concerns that led to this mandate.

67. The Special Rapporteur had already completed a great deal of her study even prior to the fifty-third session of the Sub-Commission. Some of this work, and indeed much of the work accomplished throughout these years and not included in her previous reports to the Sub-Commission, owing either to page limitations or to deadlines for the submission of documents, may now have to be reviewed in the light of 11 September 2001. As already stated in the introductory part of this report, the Special Rapporteur considers that it is detrimental to this study to continue work on it as if 11 September 2001 had not happened. The 11 September 2001 catalyst of events, developments, disparate views, reversals, counter-reversals of opinion, and serial debate over human rights, terrorism and "new" international law have made this mandate gain in importance, as well as hardship or difficulty, in today's unstable and shifting environment. The significant unintended consequences of the global fight against terrorism might even justify some shift in the original focus of the study. Prudence suggests taking seriously whatever consequences and changes are reshaping today's environment, in order to be able to respond effectively to the challenges posed by this mandate.

68. In light of the above, and her concerns about time and the array of topics that still need the attention of the Sub-Commission, the Special Rapporteur recommends to the Sub-Commission to entrust her with the preparation of an additional progress report. With more time to study and reflect upon the recent catastrophic events, from some distance and "when the dust settles", hopefully, in the course of the coming year, she believes that she can more usefully contribute to the topic under consideration.

Notes

[1] See, for instance, the statement to the General Assembly of 22 October 2001 by Amnesty International, entitled "Draft comprehensive convention on international terrorism: a threat to human rights standards" (AI Index: IOR 51/009/2001); the press release issued by the United Nations Office at Geneva on 29 November 2001 entitled "Action against terrorism must not undermine human rights say High Commissioner for Human Rights, Council of Europe and OSCE", containing the joint statement by the United Nations High Commissioner for Human Rights, the Secretary-General of the Council of Europe and the Director of the OSCE Office for Democratic Institutions and Human Rights, cautioning Governments that measures to eradicate terrorism must not lead to excessive curbs on human rights and fundamental freedoms; the joint statement issued on 10 December 2001 by 17 experts of the Commission on Human Rights on the occasion of Human Rights Day, reminding States of their obligations to uphold human rights and freedoms in the context of the aftermath of 11 September 2001 (E/CN.4/2002/75, annex IV); the public statement of 22 March 2002, entitled "A human rights framework for responding to terrorism - Open statement to the 2002 Commission on Human Rights from Amnesty International, Cairo Institute for Human Rights Studies, Federation internationale des ligues des droits de l'homme, Human Rights Watch and International Commission of Jurists". And see also the resolution "Terrorism and Human Rights" of 12 December 2001 of the Inter-American Commission on Human Rights.

[2] See the Report of the United Nations High Commissioner for Human Rights submitted pursuant to General Assembly resolution 48/141, under the title "Human rights: a uniting framework" (E/CN.4/2002/18 of 27 February 2002), para. 5.

[3] See General Assembly resolution 56/1 of 12 September 2001, paras. 4 and 3.

[4] Security Council resolution 1269 (1999) of 19 October 1999 was the first to address the matter of terrorism in general. See the first progress report of the Special Rapporteur (E/CN.4/Sub.2/2001/31), para.14.

[5] See E/CN.4/2002/18, para. 31.

[6] The General Assembly authorized the setting up of the working group in its resolution 54/110 of 9 December 1999, and the Sixth Committee established the Working Group on 25 September 2000 (see the report of the Working Group, A/C.6/55/L.2). In this way, work on drafting a comprehensive convention would take place twice each year.

[7] A/C.6/56/L.9 of 29 October 2001.

[8] Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 37 (A/57/37).

[9] See "Comprehensive Convention Against International Terrorism, joint letter Amnesty International/Human Rights Watch", New York, 28 January 2002, at: *http://hrw.org/press/2002/01/terror012802-ltr.htm.*

[10] See "Human Rights Watch Commentary on the Draft Comprehensive Convention on Terrorism", Human Rights News, 17 October 2001, at: *http://www.hrw.org/press/2001/10/terrorcom1017.htm*.

[11] See International Commission of Jurists position on draft comprehensive convention on international terrorism of 24 January 2002 and F. Andreu-Guzmán, (ed.), Terrorism and Human Rights, occasional paper No. 2, International Commission of Jurists, Geneva, 2002.

[12] See S/2001/935 of October 2001, for the composition of the Counter-Terrorism Committee; the annex to S/2001/986 of 19 October 2001 for its work programme, and *http://www.un.org/Docs/sc/committees/1373/guide.htm* for the "guidance" for submission of reports by States.

[13] Information on States' reports is available at: *http://www.un.org/Docs/sc/committees/1373/1373reportsEng.htm*

[14] See S/2001/1297 of 28 December 2001.

[15] The full text of this resolution (31C/Resolution 39) is available at: *http://www.unesco.org/confgen/press_rel/201001_terrorism.shtml*

[16] See COM (2001) 521 final, 2001/0217 (CNS).

[17] Ibid., preambular para.7, p. 15.

[18] See COM (2001) 522 final, 2001/0215 (CNS).

[19] See European Parliament, Report on the two proposals, Final A5-0003/2002 of 9 January 2002.

[20] See Official Journal of the European Communities L 344 of 28 December 2001.

[21] See also S/2001/1297, op. cit., as well as "Agreement on a European arrest warrant - Extradition will no longer be necessary between EU member States" at: *http://europa.eu.int/comm/justice_home/news/laecken_council/en/mandat_en.htm*.

[22] See Council of Europe, Committee of Ministers, "Declaration of the Committee of Ministers on the fight against international terrorism", adopted on 12 September 2001 at the 763rd meeting of the Ministers' Deputies, at: *http://cm.coe.int/taldecl/2001/2001dec3.htm*

[23] See ibid. and report of the 1st meeting of the Group of Specialists on Human Rights and the Fight against Terrorism, Steering Committee for Human Rights of the Council of Europe, document DH-S-TER (2001) 3 def. of December 2001.

[24] Document DH-S-TER MISC 3, Strasbourg, 18 February 2002.

[25] See OSCE documents: decision No. 1, "Combating terrorism", MC(9).DEC/1, annex and MC.DOC/2/01 of 4 December 2001.

[26] OSCE document FSC.DEC/5/02 of 20 March 2002.

[27] See S/2002/34 of 8 January 2002.

[28] Resolution RC.23/RES/1/01 rev.1 corr.1, of 21 September 2001, para. 9.

[29] Document of the Organization of American States, OEA/Ser.G CP/CAJP-1829/01 of 27 September 2001.

[30] See document of the Organization of American States OEA/Ser.G CP/CAJP-1848/01 of 14 December 2001.

[31] See document of the Organization of American States OEA/Ser.G CP/CAJP-1891/02 rev.1 corr.1 of 8 May 2002.

[32] See resolution AG/RES. 1840 (XXXII-O/02) of 3 June 2002.

[33] See article 2 of the Inter-American Convention Against Terrorism and Convention on the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970; Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971; Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the United Nations General Assembly on 14 December 1973; International Convention against the Taking of Hostages, adopted by the United Nations General Assembly on 17 December 1979; Convention on the Physical Protection of Nuclear Material, signed at Vienna on 3 March 1980; Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 24 February 1988; Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988; Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988; Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed at Montreal on 1 March 1991; International Convention for the Suppression of Terrorist Bombings, adopted by the United Nations General Assembly on 15 December 1997; International Convention for the Suppression of the Financing of Terrorism, adopted by the United Nations General Assembly on 9 December 1999.

[34] See OAU Central Organ Ministerial Communiqué on Terrorism, available at: *http://www.dfa.gov.za/docs/terroau.htm*.

[35] See the full texts at: *www.oic-oci.org*.

[36] General comment No. 29 on states of emergency (art. 4), adopted by the Committee on 24 July 2001 (CCPR/C/21/Rev.1/Add.11).

[37] Ibid., para. 11.

[38] Ibid., para. 16.

[39] Ibid.

[40] See CCPR/CO/73/UK, CCPR/CO/73/UKOT of 5 November 2001, para. 6.

[41] See CCPR/CO/74/SWE of 24 April 2002, para. 12.

[42] See CCPR/CO/71/UZB of 26 April 2001, para. 15.

[43] See CERD/C/60/Misc.22/Rev.6 of 8 March 2002.

[44] E/CN.4/2002/75, annex IV.

[45] See E/CN.4/2002/18, para. 55.

[46] See SG/SM/8196-HR/CN/989 of 12 April 2002.

[47] Ibid.

[48] See, for instance, statement by Ruud Lubbers, United Nations High Commissioner for Refugees to the Third Committee of the General Assembly, New York, 19 November 2001; UN News Centre, 20 February 2002: UNHCR chief warns anti-terrorism fight must not weaken protection for refugees; and the message from Mr. Lubbers to the Meeting of Experts on Terrorism and International Law: Challenges and Responses, held at the International Institute of Humanitarian Law, San Remo, Italy, 30 May-1 June 2002.